(2)

No. 03-837

Supreme Court, U.S.
FILED
MAR 12 2004
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID DERRINGER,

Petitioner,

vs.

MICK C. CHAPEL and JENNIFER CHAPEL

Respondents,

On Petition For Rehearing under Rule 44 concerning the Petition for Writ of Certiorari To The New Mexico Supreme Court's and underlying New Mexico Court of Appeals' violations of the United States Constitution

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PETITION FOR REHEARING

David Derringer Pro-Se
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IN THE SUPREME COURT OF THE UNITED STATES

US Supreme Court No.03-837
NM Supreme Court No. 28,173 & No. 28,217
NM Court of Appeals No. 23,815 & No. 23,965

DAVID DERRINGER
Petitioner,

v.

MICK C. CHAPEL and JENNIFER CHAPEL,
Respondents,

PETITIONER'S TIMELY PETITION FOR REHEARING PURSUANT TO SUPREME COURT RULE 44 WITH CERTIFICATION

COMES NOW the Pro-Se Petitioner, David Derringer, within the 25 day parameters of Rule 44, with his Motion for Rehearing, with certification that it is not meant for delay, on the denial of the Petition for Writ of Certiorari Supreme Court No. 03-837.

I PREFACE

The United States Constitution and Title 42 U.S.C. Section 1982, and all prior case laws clearly oppose this irrational decision, as the reason for this Petition for Rehearing under Rule 44. The denial is without rational explanation as to whether the United States Supreme Court does not fully comprehend what has transpired in this matter in violation of every right the Petitioner has in the United States, or whether the United States Supreme Court has no honor or integrity to protect the United States public against violations of their fundamental chartered Constitutional rights to due process, the equal protection of the laws, and the rights to own and use real private property appurtenant to the state laws guaranteed to them under Legislative intent of the equal protection of the laws.

A quote from U.S. Supreme Court Justice Tom C. Clark in *Mapp*

V. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (June 19, 1961), as follows: "Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its ***disregard*** of the charter of its own existence." As Mr. Justice Brandeis, dissenting, said in *Olmstead v. United States*, 277 U.S. 438, 485 (1928): "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. . . . If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."" (***Emphasis*** *added*).

Does this court fully understand that the Chapels have themselves violated every state law, NM Constitution Article 2 and 16, and committed criminal fraud and perjury with their illegal 14.3 foot dam, to use these violations to then "**enslave**" the Petitioner against the 13th Amendment, by use of their own violations of laws, and steal the legal right to statutory compliant stock ponds as guaranteed to the Petitioner under the state Legislature in violation of "equal protection"(Title 42 Section 1981(a), and then to Order destruction, damages and fines against the Petitioner for legal Private Property Rights outside of the jurisdiction of the courts, and the Chapels, to then use these violations to foreclose on the Petitioner's real property in criminal larceny (30-16-1)? State of New Mexico ex rel. S.E. Reynolds, State Engineer, and Pecos Valley Artesion Conservancy District, vs. Joe Mitchell and J.T. Mitchell No. 6524 Supreme Court of New Mexico 66 N.M. 212, 345 P.2d 744 Sept. 18, 1959; Jicarilla Apache Tribe v. United States, 657 F2d 1126 (10th Cir. 1981) C.A.10 N.M. 1981. Does this court also understand that the Petitioner was denied any due process, and now has been Ordered to have no **future** due process, Pro-Se representation in any court of law in the United States; to be denied Constitutional rights to either sue against future Constitutional and Civil Rights violations, or to be unable to defend himself against future suits facing him taking additional Constitutional and Civil Rights, and that this illegal "Order" was done to both protect the

Chapel's violations of laws and "racketeering" (RICO ACT), and to also protect deviant justices from suits against them without immunity; such justices that have violated their Oath to do such treason against the United States? United States v. Guest, 383 US 745 (1966); Griffin v. Breckenridge, 403 US 88 (1971) Footnote[101] 383 US 787 (1966) due process clause, Footnote [102] equal protection clause, Footnote [103] Sec. 5 empowers Congress to enact laws punishing all conspiracies to interfere with the exercise of Fourteenth Amendment Rights, whether or not state officers or others acting under the color of state law are implicated in the conspiracy." Does this court fully understand that the Chapels and deviant justices have mis-used the courts to commit felonious crimes of larceny, fraud, perjury and "enslavement" without any due process and illegally seized real property without David Derringer's opportunity to be heard? [SEE: Montoya v. Blackhurst, 84 N.M. 91, 500 P.2d 176 (1972); Sena v. Montoya, 346 F.Supp. 5 (D.N.M. 1972); Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L.Ed.2d 556 (1972) pre-judgement seizure of property without opportunity to be heard is unconstitutional.] If this court fully understands these proven facts, and still supports the denial of the Petition for Writ of Certiorari of No. 03-837, this court is working outside of any conceivable jurisdiction or judicial capacity under the meaning of Oath and the Code of Judicial Conduct Canon 3 (B)(2) to affirm the Chapels' and the NM State Courts' total violations of due process, equal protection of the laws, and the rights in America to own and use Private Property under Title 42 U.S.C. Section 1982 with legal statutorily compliant structures that are guaranteed to the Petitioner by the State of New Mexico Legislature. Accordingly, this denial confirms that any criminal in the United States with enough money and power, can drive out any other citizen, steal their rights, their lands, and their humanity, safety, liberty, and freedom, within this United States, and no court will stop these

egregious acts, even though every part of the Constitution and each law of the state and nations oppose and forbid these criminal acts. Hence, with the denial of the No. 03-837 Petition for Writ of Certiorari, the United States Supreme Court grants "dictatorship" to any and all lower court justices, and criminals in America, and renders the provisions of the United States Constitution, all prior case laws defending the Constitution, and all Legislated laws moot and worthless to any American citizen. The denial of No. 03-837 in fact sets case law and stare decisis against every American, in opposition to any right in the Constitution, allowing anyone to control another in slavery and involuntary servitude in America with the money and corruption to do so, making the Constitution meaningless. Hence, denial of No. 03-837 will set case law against the rights of every American in turn.

There can be **NO-ONE** in the United States above the laws and Rules established under Constitution, statutory laws, case laws, Rules of Civil Procedure, and the Code of Judicial Conduct, and no court can defend this criminal behavior, or deny, deprive or circumvent those laws or Rules against an American citizen.

> **Canon**: "Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law."

In this matter, the underlying illegal and unconstitutional decisions have created multiple dictators against the American public, each picking and choosing "**if, what, when and where**" any citizen could exercise Constitutional rights; illegal decisions that have defeated America, and spells the collapse of the United States as surely as

Rome, Russia and other corrupt nations in the past. With mis-use of power to grant protection for criminal acts and violations of Constitutional and Civil Rights, outside of jurisdiction and judicial capacity, destroys the judicial system and the charter of our own existence as Americans, and the mandated faith in such a system that is required in America to prevent anarchism and the mandated integrity of the United States Constitution.

In this matter, it has been proven undeniably to this United States Supreme Court in "knowledge of documents"[1] and in all underlying courts, that Judge Fitch never had jurisdiction or judicial capacity of Catron County Case CV-94-10 or any matters appurtenant to the substantive content therein due to defect of parties in jurisdictional defect, his mandated recusal under NMRA 2002, 1-088.1(D), and the according lack of jurisdiction of subject matter over water issues, without all necessary and indispensable property owners affected before the court. Judge Fitch, in proven collusion with the Chapels, used Chapels own violations of state laws to deny legal statutory rights against the Petitioner violating all "equal protection". Due to Fitch's own willful denial of 14th Amendment rights of due process and violation of NMRA 2002, Rule 1-019(A)(2)(b);[2] and due to the Private Property Act of Title 42 U.S.C. Section 1982 Judge Fitch and Chapels certainly had no jurisdiction or judicial capacity to willfully deny and deprive the "equal protection" of clearly established statutory rights as guaranteed by Legislature when outside of their jurisdiction on private lands. Chapels' domestic terrorism and Judge Fitch's intimidation and threats of force to threaten, ignore the law for

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1

Canon: "knowledge", denotes actual knowledge of the fact in question.

2

Canon: **"A judge SHALL be faithful to the law"**

criminal means to "obstruct justice" in these egregious acts and coercion were meant to discourage, dissuade and prevent the judicial process from proceeding fairly by force[3]. In re Sealed Case, 162 F.3d 670, 333 US App DC 245

Judge Thomas Fitch and the NM Courts, "swore to **God**" in an oath[4] of office to obey, protect, and enforce all laws of the US Constitution, New Mexico Constitution, and to abide by the Rules of Civil Procedure, and the Code of Judicial Conduct. It is undeniably proven that Judge Fitch was against the 14th Amendment[5] without jurisdiction in CV-94-10 to aid and abet Chapels' proven violations of state laws. In re Williamson, 43 BR 813 Chapels cannot be singled-out to be above the laws. The United States Constitution has been severely violated according to the 1st, 4th, 8th, 9th, 13th, and 14th Amendments and this United States Supreme Court is bound under Oath and stare decisis to uphold the American way of life pursuant to the Constitution at all times. State ex rel. Callaway v. Axtell, 74 N.M. 339, 343 393 p.2d 451, 454 (1964)**"Stare Decisis is the judicial obligation to follow precedent, and it lies at the very core of the judicial process of interpreting and announcing law."** The United

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3

US v. Baum, 32 F. Supp.2d 642 "SCNY 1999

4

Oath taken by Judge Fitch: "I, Judge Thomas Fitch, do solemnly swear that **I will support the Constitution of the United States and the Constitution and laws of the State of New Mexico...SO HELP ME GOD."**

5

"US Constitution 14th Amendment Section 3-No person shall be an...elector..or hold any office, under the United States, or under any State, who, having previously taken an oath,... as a judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

States Supreme Court thus has the obligation to treat the Petitioner's case fairly without respect to persons[6] and in the same manner as United States v. Guest, 383 US 745 (1966); Griffin v. Breckenridge, 403 US 88 (1971) Footnote[101] 383 US 787 (1966); State v. Jones, 44 N.M. 623, 634, 107 P.2d 324, 331 (1940)

II FACTS SUPPORTING THE CONSTITUTIONAL VIOLATIONS OF CHAPELS AND THE NEW MEXICO COURTS

Chapels have confessed to violations of state laws and NM Constitution, that in 1984 they built their illegal 14.3 foot high dam prohibited by the NM Constitution Article 16. (**Exhibits 1**) After the Petitioner moved upstream of the Chapels and after the proven criminal fraud and forgery of attorney Thomas Fitch (**Exhibit 2**) against the Petitioner's predecessor in title, Chapels used criminal force of "domestic terrorism" and their illegal dam to try to dislodge the Petitioner from Catron County and New Mexico. Despite David Derringer, being a deeded necessary and indispensable property owner long before the first trial of the jurisdictionally defective CV-94-10 (**Exhibit 3**), Judge Fitch and Chapels teamed up denying all 14th Amendment rights of due process and equal protection of the law, and making the Case CV-94-10 inherently jurisdictionally defective. The Chapels then lied to the court jury that their already proven illegal 14 foot dam was in statutory compliance and "under 10 feet". (**Exhibits 4**) Without any jurisdiction or judicial capacity due to defect in parties and lack of parties indispensable and necessary for subject matter jurisdiction, Judge Fitch continues with CV-94-10 when it was mandated that all property owners be before the court or the case be dismissed. Holguin v. Elephant Butte Irrigation District, 91 N.M. 398,

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6

I, Judge _____, **do solemnly swear that I will administer justice without respect to person**, ...**SO HELP ME GOD**

575 P.2d 88 (1977) ; KRM Inc. v. Caviness, 122 N.M. 389, 925 P.2d 9 (Ct. App. 1996)

The illegal, unconstitutional and jurisdictionally defective "Judgement and Injunction of May 17, 1996, wherein David Derringer was a **NON-PARTY** took the due process rights from David Derringer, and stole the guaranteed statutory rights in violation of equal protection; all without any opportunity to be heard. Chapels used their own violations of state laws to "have an injunction against" the Private Property Act Title 42 U.S.C. Section 1982 and "equal protection" rights of David Derringer, to have, own, and use statutory compliant stock ponds in New Mexico as provided for by Legislative intent of NMSA 1997, 72-5-32 and 72-9-3, and to do so in "slavery" within the meaning of the 13th Amendment; all with Chapels proven violations of state laws. Pepper v. Alezander, 599 Supp. 523; Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968).

David Derringer was never legally bound to the illegal, unconstitutional and jurisdictionally defective Judgement and Injunction of May 17, 1996 since he was **NON-PARTY** .Sangre de Cristo Development Corporation, Inc. v. City of Santa Fe, No. 9441 S Ct of New Mexico 503 P.2d 323, 84 N.M. 343 November 24, 1972; Allen v. McClellan,77 N.M. 801, 427 P.2d 677 (1967) It is proven by the NM State Engineer Memo. of June 19, 1996, (**Exhibit 5**), the Hydroscience Inc. study of February 12, 1999, (**Exhibit 6**), the GPS survey of June 20, 2001(**Exhibit7**),and the PHD Engineer/Hydrologist Alan Kuhn report of June 29, 2001 (**Exhibit 8**) that Chapels had constantly violated state laws, and had used those violations in CV-94-10 to deprive due process and equal protection and to "enslave" and take statutory rights guaranteed by the NM Legislature. This was done on private property with no jurisdiction due to Title 42 Section 1982, with no jurisdiction or judicial capacity, since the Nevitt//Derringer stock ponds were legal, historical, and in

statutory compliance. Three Rivers Land Co. v. Maddoux, 98 N.M. 690, 652 P.2d 240 (1982) In CV-94-10, Judge Fitch and Chapels were determined to stop all Constitutional rights against the Petitioner any costs to the law, the judicial system or the Constitution of the United States of America and to punish the Petitioner for ownership, use and rights on private property in America. Jones v. Mayer Co., U.S. Supreme Court 392 U.S. 409 No. 645 (1968) -

When the Petitioner continued to litigate CV-94-10 Judge Fitch Ordered the Petitioner to never litigate in the future. (**Exhibit 9**)

In the interim of the constant ongoing litigation over CV-94-10, without the possibility for Chapels to use CV-94-10 to conduct another lawsuit CV-02-19 against the Nevitt/Derringers, wherein there is no legal judgement or Order until the litigation is complete, Chapels filed another malicious prosecution of CV-02-19 in criminal fraud to foreclose on the real property of the Petitioner, based upon the criminal fraud of CV-94-10; of matters before this court. In re Acosta, 200 BR 57

CONCLUSION

Chapels have continued with the use of this illegal dam without permit, constantly taking the equal protection and due process from the Petitioner, "enslaving" and stealing all inherent and statutory rights of equal protection, liberty, safety, happiness, private property rights, human rights in CV-94-10 in a total disregard for the charter of the existence of the United States; the United States Constitution and statutory laws based upon same; stealing Title 42 Section 1982 rights with use of violations of statutes. State ex rel. Bliss v. Dority, 55 N.M. 12, 225 P.2d 1007 (1951) Chapels cannot deprive the equal protection or due process of the Petitioner due to the current neglect of the United States Supreme Court justices refusal to either read the Petition for Writ of Certiorari, or the violations of Oath allowing the Petition to be denied and institute case laws against every American

to allow criminals and deviant justices and violations of Constitution by the NM Courts to "enslave" Americans and deprive every Constitutional right. This Supreme Court was dutifully bound at all times to protect every American against violations of due process, equal protection, and to protect private property rights pursuant to Title 42 U.S.C. Section 1982, and the denial of the Petition for Writ of Certiorari defiles every right that the Petitioner possesses in America.

THEREFORE, under Oath, Constitution, and all federal laws, the Petition for Writ of Certiorari is mandated not to be dismissed and the Chapels and the New Mexico Courts not be allowed to singe-out the Petitioner to persecute against Constitutional and Civil Rights, nor allow the Chapels to be singled-out to be allowed to persecute the Petitioner, violate all laws, enslave another, and steal private property and private property rights defying any equal protection of all laws to take the foundation from the United States and control citizens with mis-use of the courts. May v. Marijo Corp., 207 Neb. 422, 299 N.W. 2d 433, 434 (1980) ; Ward v. Broadwell, 1 N.M. 75 Gild 75 N.M. Terr 1854. To allow denial of No. 03-837 will set case laws against each and every American to allow criminals and the errant New Mexico courts to take any and all Constitutional and Civil Rights from anyone at any time. Clearly, there is a penchant in the judicial system that ignores Pro-Se parties seeking justice when justice should be achieved when an American is wronged by both individuals and the mis-use of the courts and arrogance and corruption of justices working within. In the interest of justice, law, Constitution and stare decisis, the denial of the Petition for Writ of Certiorari is illegal under the Constitution and case laws established by the prior decisions of the Supreme Court and must be reversed. In re Rochkind, 128 B.R. 520 Mich. 1991.by:_____

David Derringer Pro-Se, Box 157, Quemado, NM 87829

CERTIFICATE OF COMPLIANCE WITH RULE 44

I, David Derringer, under penalty of perjury within the meaning of Title 18 U.S.C. Section 1621, state that this Petition for Rehearing was properly and legally brought under the provisions of the United States Constitution 13th Amendment and the 14th Amendment of due process and equal protection. The grounds for petition for rehearing are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Further, there are already case laws established by the United States Supreme Court in "stare decisis" that prohibit Chapels from being singled-out as available to violate state laws and use those violations to enslave another and take Constitutional, Statutory and Civil Rights away from the Petitioner and destroy all due process and equal protection. In this underlying matter of CV-94-10, Judge Fitch consistently worked outside of jurisdiction and judicial capacity in violating the laws, Constitution, Rules of Civil Procedure, and the Code of Judicial Conduct against the Petitioner, and aided and abetted the crimes of the Chapels. Clearly, also the NM Courts have violated all provisions of the US Constitution. Hence, the Petitioner comes to this court with her Petition for Rehearing timely under Rule 44 in good faith and with all Constitutional, case laws, and federal statutes on the side of the Petitioner, and thus such Petition is not meant to waste the time of the court, nor is it meant for delay. It should be clearly noted that the lower courts have lied to falsify the record and have singled-out the Chapels to violate state laws and have singled-out and persecuted the Petitioner for legal ownership of private property outside their jurisdiction, and persecuted and fined and damaged the Petitioner for legal ownership, use and statutory compliant stock ponds that are guaranteed to the Petitioner under "equal protection".

By:_____

David Derringer Pro-Se, Box 157, Quemado, New Mexico 87829

CERTIFICATE OF SERVICE

I hereby further certify that I caused 40 true and correct originals

of the forgoing Petition for Rehearing with Certificate of Compliance to Rule 44 and all Exhibits in the prescribed booklet, all to be sent first class mail on the 12TH day of March, 2004 with $200.00 payment attached for filing to:

The Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

By: _____
David Derringer Pro-Se, Box 157, Quemado, New Mexico 87829

APPENDIX A

Exhibits 1

IN THE SEVENTH JUDICIAL DISTRICT
COUNTY OF CATRON-SIERRA-SOCORRO-TORRANCE
STATE OF NEW MEXICO
CHAPEL,
V. Cause No. CV-94-10
NEVITT,
Preliminary Injunction
Before the Honorable Leslie C. Smith
June 14, 1994
2:18P.M.
APPEARANCES
FOR THE PLAINTIFF: MR. CHARLES M. OFELT
Attorney at Law
8010 Menaul Boulevard, Northeast
Albuquerque, New Mexico 87112
FOR THE DEFENDANT: MR. ELVIN KANTER
MS. MARILYN O'LEARY
Attorneys at Law
505 Marquette Avenue, Northwest
Albuquerque, New Mexico 87102

(On the witness stand Mick Chapel)

Q. Do you have a storage pond on your property for water?
A. Yes, sir.
Q. Is that a pretty good-sized pond?
A. It covers about two acres, yes, sir.
Q. That's two acres. That's pretty shallow.
A. No, it's fairly deep. It's about probably 16 feet deep.
Q. What size was this when you acquired this property?
A. Five acre feet.
Q. You enlarged it?
A. Yes, sir.
Q. Did you get a permit?

A. No, sir.

SEVENTH JUDICIAL DISTRICT COURT
COUNTY OF CATRON
STATE OF NEW MEXICO

CASE No. CV-94-10

MICK C. CHAPEL and JENNIFER CHAPEL,
Plaintiffs,

vs.

SUSAN M. NEVITT and NORMA J. NEVITT,
Defendants,

DEPOSITION OF MICK CHAPEL
October 12, 1994
9:30a.m.
Catron County Courthouse
Reserve, New Mexico 87830

PURSUANT TO THE RULES OF CIVIL PROCEDURE this deposition was:

TAKEN BY: Mr ROBERT DALE MORRISON, ESQ.
ATTORNEY FOR THE DEFENDANTS

REPORTED BY: DEBORAH E. TRATTEL, RPR, CA CCR, CCR #153
St. Rt. Box 615
Placitas, New Mexico 87043

Q. Now, did you do anything to raise the level of your dam or to increase the area of the pond?
A. Yes, sir.
Q. What did you do?
A. We enlarged the pond
Q. When did you do that?
A. About '84.
Q. Did you get any kind of permits or permission from the State Engineer?
A. No, sir.
Q. Is your dam 30 feet high?
A. Approximately, yes.
Q. From the –

A. It's less than that.
Q. What is the height at the highest point?
A. I would say at the highest point it would be 25 feet.

I, MICK C. CHAPEL, do hereby certify that I have read the forgoing pages of my testimony as transcribed, and that the same is a true and correct transcript of the testimony given by me in this deposition, except for the changes made.

/s/ Mick Chapel

Exhibits 2

IN THE MATTER OF:
MICK C. CHAPEL and JENNIFER CHAPEL V. SUSAN M. NEVITT and NORMA J. NEVITT

RAY H. EICHNER
Vol. 1, June 13, 1994
Bean & Associates, Inc.
Professional Court Reporting Service
500 Marquette, N.W., Suite 280, Albuquerque, NM 87102
123 East Marcy, Suite 208, Santa Fe, New Mexico 87501
(505) 843-9494 or (800) 669-9492
Original file eio61394.v1,80 Pages

Q. Could I look at that please? Do you think you signed it last July, Mr. Eichner?
A. I don't know.
Q. You say you don't know?
A. No.
Q. All right, Mr. Eichner. You just don't know when you signed it?
A. Huh-uh.
Q. Do you have a recollection of actually signing it? Do you have a memory that you actually signed it, sir? Now you're hesitating.
A. Sure, I'm hesitating.
Q. Well, you either remember it, or you don't. If you don't remember it, all you have to do is say so.
A. No, I don't remember.

ELKHORN REALTY

8 October 1993
V9336
EXPRESS MAIL

Willard W. & Lucy W. Rimbach
1109 S. Sutro Terrace
Carson City, Nevada 89706
RE: Grant of Right of Way Easement
Carolyn Root & John Twobirds
Dear Willard & Lucy:
Enclosed please find the "Grant of Right of Way Easement" we discussed.
Please sign, where indicated, and return to our office as soon as possible, together with the Quit Claim Deed and Closing Escrow Instructions we transmitted under separate cover, (handwritten)We received these today thanks TGF
By copy of this letter, we are sending the easement document to Twobirds, Nevitt and Chapel for their review and/or signatures.
Thank you for your cooperation in this matter.

Sincerely,
ELKHORN REALTY
/s/ Robert M. Fisher
Robert M. Fisher, Broker

RHF:bf
Enclosure: Grant of Right of Way Easement
cc: Carolyn Root & John Twobirds
Susan M. Nevitt & Norma J. Nevitt
Mick & Jennifer Chapel (handwritten) fax to attorney

Thomas G. Fitch
Attorney At Law
P.O. Box 1547
Socorro, New Mexico
210 Park Street SW
Socorro, New Mexico
Area Code 505
Telephone 835-0111

May 11, 1994

Mr. John Twobirds
Ms. Carolyn Root
P.O. Box 341
Quemado, New Mexico 87829

Dear Ms. Root and Mr. Twobirds:
Enclosed herewith please find the original Deed of Confirmation (settling boundary line) that Mr. and Mrs. Eichner conveyed to you in reference to the NE1/4SE1/4 of Section 28, Township 2 South, Range 17 West, NMPM. Please note that this has been recorded with the Clerk of Catron County, New Mexico, in Book 14, pages 825-828.
Also enclosed is a copy of the Deed of Confirmation (settling boundary line) from you both to Mr. and Mrs. Eichner and a copy of a Grant of Easement (confirmation of easement) from you both tot he Eichners which have been recorded with the Clerk of Catron County, New Mexico.
If you have any questions, please do not hesitate to contact me.
Very truly yours,
/s/ Thomas G. Fitch
Attorney at Law
tgf/t
encls: As stated
cc: Mr. & Mrs. Ray H. Eichner w/copies of encls.
Gene Baca w/copies of encls.
United National Real Estate

Thomas G. Fitch
Attorney At Law
P.O. Box 1547
Socorro, New Mexico

210 Park Street SW
Socorro, New Mexico

Area Code 505
Telephone 835-0111

May 11, 1994

Mr.and Mrs. Ray Eichner
RR/HCR #84, Box 9011
Edgewood, New Mexico 87015

Dear Mr. and Mrs. Eichner:
Enclosed herewith please find the original Deed of Confirmation (settling boundary line) from Twobirds and Root to you which has been recorded with the Clerk of Catron County, New Mexico, in Book 14, pages 825-828.and the original Grant of Easement (confirmation of easement) from Twobirds and Root to you which has been recorded in Book 14, pages 123-126.
Also enclosed is a copy of the Deed of Confirmation from you to Twobirds and Root which was recorded with the Clerk of Catron County, New Mexico.
Please let me know If you have any questions.
Very truly yours,
/s/ Thomas G. Fitch
Attorney at Law
tgf/t
cc: Gene Baca w/encls.
Robert Fisher w/ encls.

Exhibit 3

SPECIAL WARRANTY DEED

Norma J. Nevitt, a single woman dealing with her sole and separate property, and Susan M. Nevitt, a married woman dealing with her sole and separate property, for consideration paid grant to NORMA J. NEVITT, SUSAN M. NEVITT, AND **DAVID B. DERRINGER**, as joint tenants with the right of survivorship, whose address if Post Office Box 157, Quemado, New Mexico 87829 the following described real estate in Catron County, New Mexico.
DESCRIPTION OF PROPERTY:

The Northwest Quarter of the Southeast Quarter (NW 1/4, SE 1/4) of Section 28, Township 2 South, Range 17 West, N.M.P.M., Catron County, New Mexico, except that portion thereof lying within

the Right-of-Way of New Mexico State Road No. 32, more particularly described by survey of Elder Company in October, 1992, with bearings related to those of said State Road Right-of-Way, as follows:

BEGINNING at the Northwest corner, which is the Center Quarter corner of Said Section 28. marked by a U. S. Forest Service aluminum cap monument set firmly in the ground at a fence corner;

RUNNING from said beginning point South 89 deg. 01 min. 48 sec. E., 1307.32 feet along the east-west centerline of said section to the east center 1/16 corner of said section, similarly marked/

THENCE, S. 01 deg. 02 min. 41 sec. W., 1038.85 feet to a point on the westerly right-of-way line of New Mexico State Road 32, marked by a 5/8" iron reinforcing rod stake set firmly in the ground with plastic cap bearing L. S. No. 4690'

THENCE, S. 28 deg. 57 min. 39 sec. W., 129.96 feet along said road line to and angle point therein, marked by a N.M. Highway Department T-Rail monument in place;

THENCE, S. 28 deg. 57 min. 39 sec. W. 129.96 feet along said road line to its intersection with the sourth 1/16 line of said section 28, which is the southeast corner of the parcel herein described, marked by a 5/8 inch iron reinforcing rod stake set firmly in the ground with cap bearing L.S. No. 4690;

THENCE, N. 89 deg. 08 min. 42 sec. W, leaving said road line, 1182.71 feet along said 1/16 line to the southwest corner of the parcel herein described, which is the south-center 1/16 corner of said section, marked by a U. S. Forest service aluminum cap monument set firmly in the ground;

THENCE, N. 00 deg. 50 min. 44 sec. E. 1330.42 feet along the north-south centerline of said section to the point of the beginning.

EXCEPTING therefrom all that portion thereof lying within the right-of-way of New Mexico State Road 32.

CONTAINING 39.4644 acres, more or less, and subject to any easements of record.

With special warranty covenants.

Witness our hands and seals this day of
/s/ Norma J. Nevitt by Susan M. Nevitt
Susan Nevitt her Attorney in Fact

State of New Mexico County of Catron
The foregoing instrument was acknowledged before me this 11th day of September, 1995 by Norma J. Nevitt by her Attorney in Fact Susan M. Nevitt, and Susan M. Nevitt.
(Seal)

/s/ Bonny Baca
Notary Public

STATE OF NEW MEXICO
CATRON COUNTY
This instrument of writing was filed
for record on the 25th day of September AD
1995 at 1:11 O'Clock PM and duly recorded
in Vol.16 of Deeds on Page 267
/s/ Sharon Armijo
County Clerk
by /s/ VJ
Deputy

Exhibits 4

STATE ENGINEER OFFICE
MEMORANDUM
DATE: May 22, 1995
Thomas C. Turney, State Engineer
THRU: Donald T. Lopez, P.E. Assistant State Engineer
FROM: Charles E. Merritt, P.E. Design & Construction Bureau
SUBJECT: FIELD CHECK OF IRRIGATION STORAGE DAM IN CATRON COUNTY (RE: DERRINGER V. CHAPEL) APPROXIMATELY 18 MILES SOUTH OF QUEMADO, NEW

MEXICO, FILE NO. 02311

As requested, on May 19, 1995, I inspected a small private storage dam in Catron County owned by Mr, Mick Chapel. Accompanying me on the inspection were Messrs. Jim Smith and Wayne Canon of the Albuquerque State Engineer District Office. Mr. Chapel's dam is located directly downstream from Mr. David Derringer's property...

Mr. Chapel's dam is about 420 feet long and about 14 feet high at the maximum section.

STATE ENGINEER OFFICE, DISTRICT 1

Thomas C. Turney

STATE ENGINEER

DRAFT MEMORANDUM

April, 4, 1996

FILES: ...and 02311 Chapel

Priority review of Mick and Jennifer Chapel surface water declaration Nos. 02311

FINDINGS:

The Chapels only claim to water rights in support of their protest is based on Declaration No. 02311, for prior to March 19, 1907. No State Engineer permit or license has been issued nor do the records reflect the adjudication of any water rights to the subject lands.

Declaration No. 02311: Based on the aerial photographs and the cost share agreement between Mr. Armijo and the SCS, the priority date for stock use is estimated to be December 4, 1967. The amount of water for stock purposes has not yet been quantified. Based on the 1968 aerial photographs and the SCS records, a pond can be identified of an approximate size of 5 acre feet. No irrigated acreage can be identified in the 1968 photograph. There is no documentary evidence of irrigation of the claimed 26 acres until the 1975 aerial photograph. There is no evidence to support the claim of pre-1907 water right for irrigation purposes of use.

Exhibit 5

STATE ENGINEER OFFICE, DISTRICT 1
Thomas C. Turney
STATE ENGINEER
MEMORANDUM

June 19, 1996

FILES: ...and 02311 Chapel

Priority review of Mick and Jennifer Chapel surface water declaration Nos. 02311

FINDINGS:

The Chapels only claim to water rights in support of their protest is based on Declaration No. 02311, for prior to March 19, 1907. No State Engineer permit or license has been issued and the records do not reflect the adjudication of any water rights to the subject lands.

Declaration No. 02311: Based on the aerial photographs the priority date for stock use is estimated to be March 14, 1950. The amount of water for stock purposes has not yet been quantified. No irrigated acreage can be identified in the 1935, 1950, 1954 or 1960 aerial photographs. There is no documentary evidence of irrigation of the claimed 26 acres until the 1968 aerial photograph. There is no evidence to support the claim of pre-1907 water right for irrigation purposes of use.

Exhibit 6

Hydroscience Associates Inc.
P.O. Box 21087
Albuquerque, New Mexico 87154
(505) 271-9175
hydrosci@nm.net

February 12, 1999

An Assessment of Hydrogeologic Issues
and Water Supply Needs Associated

with Application No. 4615
Catron County, New Mexico
Claimed Chapel Water Rights

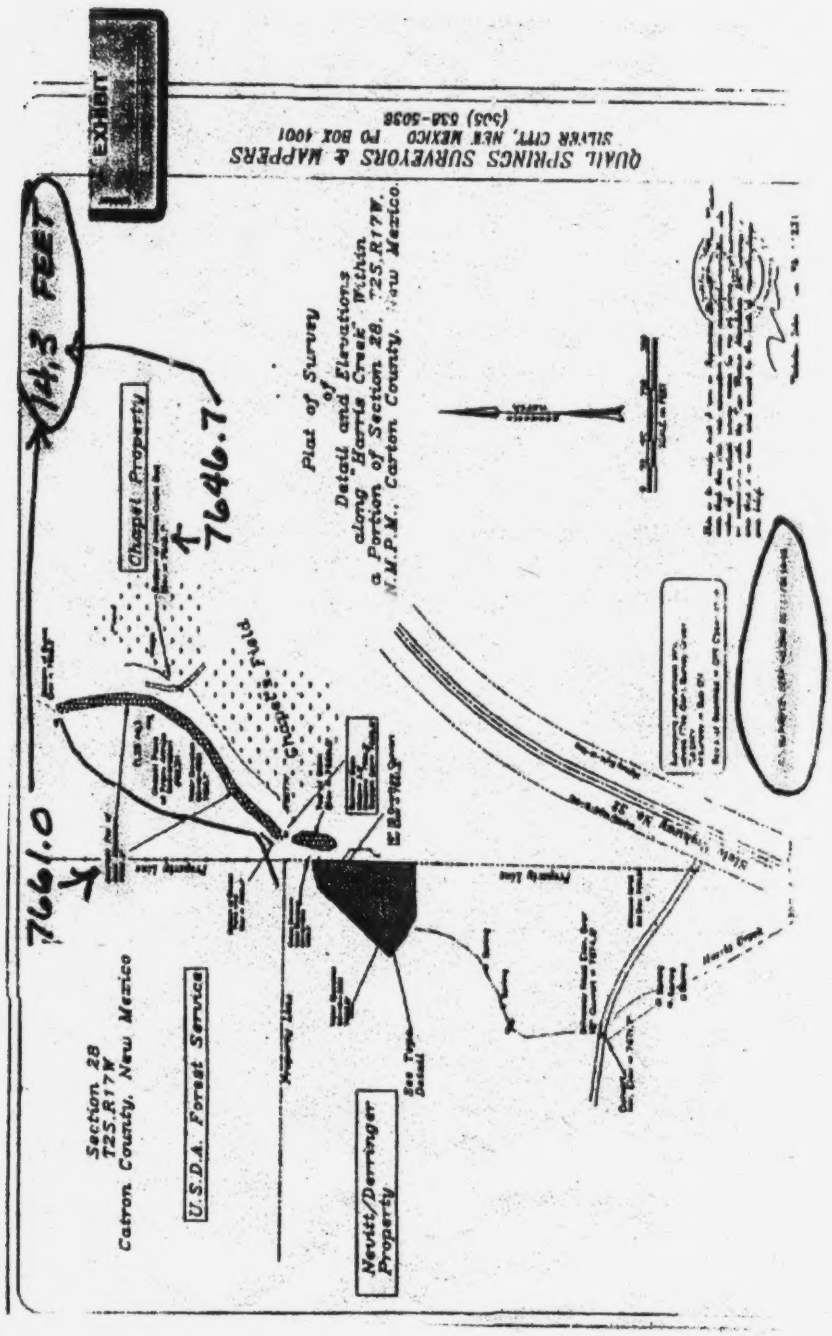
Through a change of ownership of water right filed on November 17, 1987, Mick and Jennifer Chapel obtained ownership of Declared water right 02311 on Harris Creek....which diverted water through a quarter mile long ditch to a five acre foot earthen storage reservoir.

Description of Physical Works:

The Chapels have an on-channel storage reservoir which covers approximately two surface acres in size and reaches a maximum depth of sixteen feet. The size of the pond was increased in 1986 from the size it was in 1968, and changed from an off-channel to an on-channel reservoir. Harris Creek now flows directly into and out of the pond, as opposed to the off-channel reservoir filled through a 1/4 mile diversion ditch described in Declaration 02311. The present location of the pond and diversion ditch which diverts water from Harris Creek to the pond are significantly different from the way they were described in the Declaration 02311...US Geological survey..in 1981...indicates the northern pond was the Chapel pond before it was enlarged. The northern pond..was..the Chapel pond before it was enlarged.

/s/ Mary Anne Wasiolek

Exhibits 7



BEST AVAILABLE COPY

DAM HEIGHT-14.3 FEET GPS SURVEY 6/20/2001 QUAIL SPRINGS SURVEY

POND AREA 1.25 ACRES GPS SURVEY 6/20/2001 QUAIL SPRINGS SURVEY

POND DEPTH 16 FEET-MICK CHAPEL TESTIMONY JUNE 14TH, 1994

ILLEGAL CONSTRUCTION OF DAM/POND WITHOUT ENGINEER OR STATE ENGINEER PERMIT BY MICK CHAPEL-TESTIMONY MICK CHAPEL JUNE 14TH, 1994 & MICK CHAPEL DEPOSITION OCTOBER 12, 1994

POND CAPACITY- 1.25 ACRES X 16 FEET DEEP = 20 ACRE/FEET

NMSA 1978/1997, 72-5-32. CONSTRUCTION OF DAMS EXCEEDING TEN FEET IN HEIGHT

Any person, association or corporation, public or private, the state of the United States hereafter intending to construct a dam shall meet the requirements of filing applications for appropriations and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978/1997. Any person intending to construct a dam that exceeds ten feet in height from the lowest natural ground surface elevation to the crest of the dam or impounds more than ten acre-feet of water shall submit on a form prescribed by the state engineer detailed plans to the state engineer for approval before construction. If the state engineer finds that the dam design is safe, he shall approve the plans; (permit) This section shall not apply to stock dams whose maximum storage capacity does not exceed ten acre-feet nor any dam which is 10 feet or less in height from lowest natural ground surface elevation.

Exhibit 8

AK GEOCONSULT, INC. Geotechnical and Geoenviromental

Engineering13212 Manitoba Drive NE Albuquerque, NM 87111-2955

June 29, 2001

Mr. David Derringer

P.O. Box 157

Quemado, New Mexico 87829

REPORT OF ENGINEERING INVESTIGATIONS AND FINDINGS, MATTER OF CHAPEL VS. NEVITT/DERRINGER

Dear Mr. Derringer:

At your request I have conducted an investigation of some of the technical elements associated with the subject litigation, which

revolves around allegations of interference with surface water. My investigation consisted of:

A site visit and visual inspections of portions of the Nevitt/Derringer and Chapel properties containing, and adjacent to Harris Creek including conveyance structures through earthfill structures across the creek and the Chapel diversion channel.

Effect of Chapel Surface Water Controls on Nevitt/Derringer Property

based on my visual observations and the results of the land survey (Ref #11), it is apparent that the Chapel diversion works immediately downstream of the property line with Nevitt/Derringer are causing a backwater effect that results in ponding of water on the Nevitt/Derringer property in the North Pond area. The outlet pipes of the North Pond are open. On the day of my inspection, the lowest pipe was flowing full and submerged, due to the effect of the backwater, to a depth of about two inches. However, this flow would be faster if the water elevation downstream on the Chapel property were lowered, increasing the hydraulic gradient and rate of flow through the pipe and lowering the water level in the North Pond.

There is water flow through the North Dam outlet pipe despite the backwater; water moves according to the hydraulic gradient. The backwater effects are the direct result of the water surface elevation maintained on the Chapel property immediately downstream of the North Pond. The elevation of the water surface in the Chapel pond controls the hydraulic gradient by setting a local base level elevation. Elimination of backwater would require either raising the outlet works in the North Dam, which would amount to an unauthorized impounding of additional water, or lowering the water level in the Chapel pond. The latter is necessary to eliminate the backwater and increase outflow from the North Pond.

Chapel Dam

The land survey (Ref. #11) shows that the average crest elevation of the Chapel Dam is 7661.0 and the elevation of the creek bed off the dam toe is 7646.7, giving a difference of 14.3 feet. Dams that are 10.0 feet or more in height must be designed by a licensed

Professional Engineer and permitted by the New Mexico State Engineer.

Respectfully submitted (SEAL)
/s/ Alan K. Kuhn
Alan K. Kuhn, PhD, PE, RPG
Alan K. Kuhn Registered Professional Engineer
New Mexico 6798

Exhibit 9

STATE OF NEW MEXICO
SEVENTH JUDICIAL DISTRICT COURT
JAN 28, 2003 3:50PM
COURT CLERK

STATE OF NEW MEXICO
COUNTY OF CATRON
IN THE SEVENTH JUDICIAL DISTRICT COURT
No. D-0728 CV 00094-00010
MICK C. CHAPEL and JENNIFER CHAPEL,
Plaintiffs,
vs.
SUSAN M. NEVITT, NORMA J. NEVITT and DAVID DERRINGER,
Defendants,

DECISION AND ORDER
(Motion to Enjoin Filing of Additional Papers)

THIS MATTER came on before the Court upon the Plaintiff's Motion for Injunction to Enjoin the Filing of Additional Motions, Pleadings, or Other Papers by Pro-Se Defendants. My decision follows:

Plaintiffs seek an injunction against the Defendants enjoining them from filing further complaints, motions, pleadings, discovery requests, or other papers unless the proposed filing is made by an attorney licensed to practice law in the State of New Mexico or has the

prior approval of the Court. The Motion does not seek to prohibit Defendants from responding to Plaintiff's motions nor from appealing from the decision arising out of the January 13, 2003 trial.

Plaintiffs rely on Lepiscopo v. Hopwood, 110 N.M. 30 (Ct. App. 1990) and State ex Rel. Bardacke v. Welsh, 102 N.M. 592 (Ct. App. 1985). The conduct of the Defendants is correctly and succinctly documented in Plaintiff's motion. Indeed, another suit not listed in the motion was filed recently by Susan Nevitt in the federal district court.

The conduct of Defendants falls within the type of conduct described in Lepiscopo and Welsh. The unusual injunctive relief sought is appropriate in this case.

The relief sought by Plaintiffs is appropriate and will be granted. Plaintiffs are to prepare the injunction.

/s/ Thomas G. Fitch
Thomas G. Fitch